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MONTANA CONSTITUTIONAL CONVENTION

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EXECUTIVE COMMITTEE PROPOSAL

Date Reported FEB 17 1972

Thomas J. Joyce, Chairman
J. Gale Weston, Vice Chairman

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TABLE OF CONTENTS

	<u>Page</u>
LETTER OF TRANSMITTAL	1
TEXT OF MAJORITY PROPOSAL	4
COMMENTS ON MAJORITY PROPOSAL	
Section 1. Officers	12
Section 2. Election	17
Section 3. Qualifications	18
Section 4. Duties	19
Section 5. Compensation	21
Section 6. Vacancy in Office.	23
Section 7. 20 Departments	24
Section 8. Appointing Power	25
Section 9. Budget and Messages.	26
Section 10. Veto Power	27
Section 11. Special Sessions	29
Section 12. Pardons.	30
Section 13. Militia	31
Section 14. Succession	32
TEXT OF MINORITY PROPOSAL	37
COMMENTS ON MINORITY PROPOSAL	
Section 1. Officers	45
Section 2. Election	47
Section 3. Qualifications	48

	<u>Page</u>
Section 4. Duties	49
Section 6. Vacancy in Office	51
Section 12. Pardons.	51
 APPENDIX	
Cross reference of present and proposed Article.	53
Delegate proposals considered by committee	54
Witnesses heard by committee	56
Roll Calls	60

Date: February 16, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Executive Committee

Ladies and Gentlemen:

The Executive Committee transmits herewith a proposed new executive article replacing Articles II, VII and XIV of the present Constitution.

In summary it repeals Article II relating to now abandoned military posts entirely, inserts the militia provision of Article XIV into the new executive article, and completely rewrites the executive article. The changes and reasons therefor are set forth in the comments after each new section.

The new article makes these changes.

(1) It eliminates from the constitution, but does not abolish, the state treasurer, state auditor, state examiner, board of pardons, board of examiners and board of prison commissioners;

(2) The lieutenant governor and governor must run as a team in the primary and general elections.

(3) The office of lieutenant governor is permitted to be a full time position.

(4) It provides the superintendent of public instruction may be made an appointive office by the legislature in the future.

(5) The salaries of elected officials may be increased but not decreased during the term.

(6) The executive budget is given constitutional recognition.

(7) The governor's veto power is modified by permitting the amendatory veto and the "pocket" veto is eliminated.

(8) The lieutenant governor will not assume the powers of governor until he is absent from the state for 45 days, unless the governor authorizes him in writing to so act in the first 45 day period.

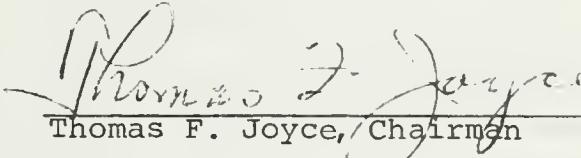
(9) It establishes a comprehensive disability procedure to determine the disability of the governor.

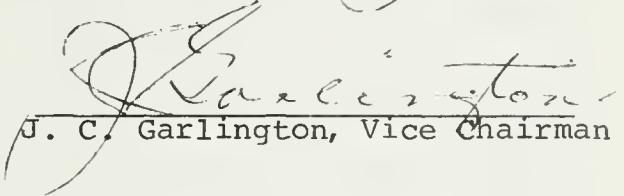
(10) It clarifies the filling of vacancies of elected offices.

The committee is grateful to all the elected state officials, past and present, the administrative department heads, the delegates who submitted proposals and all who appeared before the committee. Special thanks go to Miss Karen Beck, our research analyst, and John Crawford, the college intern assigned to our committee and to our efficient and conscientious secretary, Mrs. Barbara Lester.

By signing the majority proposal the committee members do not necessarily endorse each and every provision therein contained.

We trust that we have submitted an improved executive article for the consideration of the delegates and will graciously accept their final decision in the premises.


Thomas F. Joyce, Chairman


J. C. Garlington, Vice Chairman

MAJORITY REPORT

1 BE IT PROPOSED BY THE EXECUTIVE COMMITTEE:

2 That there be a new Article on the Executive to read
3 as follows:

4

5 ARTICLE

6 THE EXECUTIVE

7 Section 1. OFFICERS. (1) The executive department
8 shall consist of a governor, lieutenant governor, secretary
9 of state, attorney general, and superintendent of public
10 instruction.

11 (2) The superintendent of public instruction shall
12 be the chief educational officer of the state, and shall
13 have such qualifications, duties, salary, term of office
14 and manner of election or selection as is provided by law.

15 (3) Except as herein provided for the superintendent
16 of public instruction, each shall hold his office for a
17 term of four years, commencing on the first Monday of
18 January next succeeding his election and until a successor
19 is elected and qualified.

20 (4) Each shall reside at the seat of government,
21 where he shall keep the public records of his office.

22 (5) Each shall perform such duties as are prescribed
23 in this constitution, and by law.

24 Section 2. ELECTION. (1) The governor, lieutenant
25 governor, secretary of state, attorney general and the
26 superintendent of public instruction, if his election is
27 provided by law, shall be elected by the qualified electors
28 of the state at a general election held and finally
29 determined as provided by law.

30 (2) Each candidate for governor shall file jointly

1 with a candidate for lieutenant governor in primary
2 elections, or otherwise comply with nomination procedures,
3 so that the offices of governor and lieutenant governor
4 shall be voted upon together in primary and general elec-
5 tions, as provided by law.

6 Section 3. QUALIFICATIONS. (1) Any person shall
7 be eligible to the office of governor, lieutenant governor
8 or secretary of state if he or she is a citizen of the
9 United States, a resident of Montana for two years next
10 preceding the election, and is otherwise a qualified
11 voter.

12 (2) In addition to the foregoing qualifications, any
13 person to be eligible to the office of attorney general
14 shall be an attorney in good standing admitted to practice
15 law in the state of Montana, and have engaged in the active
16 practice thereof for five years before election.

17 Section 4. DUTIES. (1) The executive power of the
18 state is vested in the governor, who shall see that the laws
19 are faithfully executed. He shall have such other duties
20 as are herein provided, and as provided by law.

21 (2) The lieutenant governor shall perform the duties
22 delegated to him by the governor, and those provided for
23 him by law, but no power specifically vested in the governor
24 by this constitution may be delegated to the lieutenant
25 governor in this manner.

26 (3) The secretary of state shall maintain the offi-
27 cial records of the acts of the legislative assembly, and
28 of the executive department, as provided by law. He
29 shall keep the great seal of the state of Montana, and
30 perform any other duties provided by law.

(d) The attorney general shall be the legal officer of the state, with the duties and powers provided by law.

Section 5. (c) ENSATION. (1) Officers of the executive department shall receive salaries provided by law, which may be increased but not decreased during the term of office.

(2) No member of the executive department may during his term hold any other public office, or receive compensation for his services from any governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation or disability as determined by law the governor shall appoint a qualified person to hold and serve in that office for the remainder of the term.

(2) If the office of secretary of state or attorney general becomes vacant by death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office until the next general election and until his successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected.

(3) If the office of superintendent of public instruction becomes vacant it shall be filled in the manner above provided if it is at that time an elective office; otherwise it shall be filled as provided by law.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies and

1 instrumentalities of the executive department of state govern-
2 ment and their respective functions, powers, and duties,
3 except for the office of governor, lieutenant governor,
4 secretary of state, attorney general and superintendent of
5 public instruction shall be allocated by law among and
6 within not more than 20 departments. Subsequently, all
7 new powers or functions shall be assigned to departments,
8 divisions, sections, or units in such manner as will tend
9 to provide an orderly arrangement in the administrative
10 organization of state government. Temporary commissions may
11 be established by law and need not be allocated within a
12 principal department.

13 Section 8. APPOINTING POWER. (1) The principal
14 departments provided for in section 7 shall be under the
15 supervision of the governor, and, except as otherwise
16 provided herein or by law, shall be headed by a single
17 executive appointed by the governor and subject to confir-
18 mation by the legislature. Such executives shall hold
19 office until the end of the term of the governor, unless
20 sooner removed by the governor.

21 (2) The governor shall appoint, subject to confirmation
22 by the legislature all officers provided for by this consti-
23 tution or by law and whose appointment or election or term
24 is not otherwise provided for. They shall hold office
25 until the end of the term of the governor unless sooner
26 removed by the governor.

27 (3) If a vacancy in any such office occurs during a
28 recess of the legislature, the governor shall appoint some
29 fit person to discharge the duties thereof until the next
30 meeting of the legislature, when the office shall be filled

1 by appointment and confirmation.

2 (4) No person not confirmed by the legislature for an
3 office shall, except at its request, be nominated again for
4 that office at the same session, or be appointed to that
5 office during a recess of the legislature.

6 Section 9. BUDGET AND MESSAGES. The governor shall
7 at the beginning of each legislative session, and may at
8 other times, give the legislature information and recommend
9 measures he considers necessary. The governor shall submit
10 to the legislature at a time fixed by law, a budget for
11 the ensuing fiscal period setting forth in detail, for all
12 operating funds, the proposed expenditures and estimated
13 revenue of the state.

14 Section 10. VETO POWER. (1) All bills passed by
15 the legislature, except bills proposing amendments to the
16 Montana constitution, bills ratifying proposed amendments
17 to the United States constitution, resolutions, and
18 initiative and referendum measures, shall be submitted to
19 the governor who shall sign or veto every bill within five
20 days after its delivery to him if the legislature is in
21 session, or within 25 days if the legislature is adjourned.
22 The governor shall return vetoed bills to the legislature
23 with a statement of his objections.

24 (2) The governor may return any bill to the legisla-
25 ture with his objections and with a recommendation for an
26 amendment or amendments to it. If the legislature passes
27 the bill in accordance with the governor's recommendation,
28 it shall again return the bill to the governor for his
29 reconsideration. The governor shall not return a bill a
30 second time, for amendment.

1 (3) Upon receipt of a veto message, the legislature
2 shall reconsider passage of the vetoed bill. A two-thirds
3 vote of the members present overrides the veto, and the
4 bill shall become law.

5 (4) If the legislature is not in session when the
6 governor vetoes a bill, he shall return the bill with his
7 objections to the legislature in a manner authorized by law.
8 The legislature, as provided in section 11, may reconvene
9 itself to reconsider any bills so vetoed by the governor.

10 (5) The governor may veto items in appropriation
11 bills, and in such instances the procedure shall be the
12 same as upon veto of an entire bill.

13 Section 11. SPECIAL SESSION. Whenever the governor
14 considers it in the public interest, he may convene the
15 legislature, either house, or the two houses in joint
16 session. At the written request of two-thirds of the
17 members of each house, the presiding officers of both
18 houses shall convene the legislature in special session.

19 Section 12. PARDONS. The governor shall have the
20 power to grant reprieves, commutations and pardons after
21 conviction, reinstate citizenship and may suspend and remit
22 fines and forfeitures subject to procedures prescribed by
23 law.

24 Section 13. MILITIA. (1) The governor shall be
25 commander-in-chief of the militia forces of the state,
26 except when these forces are in the actual service of the
27 United States, and shall have power to call out any part of
28 the whole of said forces to aid in the execution of the
29 laws, to suppress insurrection or to repel invasion.

30 (2) The militia forces shall consist of all able-bodied

1 citizens of the state except such persons as are exempted
2 by law.

3 Section 14. SUCCESSION. (1) If the governor elect
4 is disqualified, or dies, the lieutenant governor-elect
5 upon qualifying for the office shall become governor for
6 the full term. If the governor-elect fails to assume
7 office for any other reason, the lieutenant governor-elect
8 upon qualifying as such shall serve as acting governor until
9 the governor elect qualifies for office, or until the
10 office becomes vacant.

11 (2) The lieutenant governor shall serve as acting
12 governor when requested in writing by the governor to do so.
13 He shall serve as acting governor during the absence from the
14 state of the governor for any period in excess of 45 days.

15 (3) He shall also serve as acting governor when the
16 governor is disabled and by reason of that disability is
17 unable to communicate to the lieutenant governor the fact
18 of his inability to perform the duties of his office. The
19 lieutenant governor in such event shall continue to serve
20 as acting governor until the governor resumes the duties of
21 his office.

22 (4) Whenever the lieutenant governor and attorney
23 general transmit to the presiding officer of the legisla-
24 ture their written declaration that the governor is unable
25 to discharge the powers and duties of his office, the legis-
26 lature shall convene.

27 (5) If the legislature, within 21 days after convening,
28 determines by two-thirds vote of its members present that
29 the governor is unable to discharge the powers and duties of
30 his office, the lieutenant governor shall enter upon and

1 discharge the same as acting governor; thereafter, when the
2 governor transmits to the presiding officer of the legisla-
3 ture his written declaration that no inability exists, he
4 shall resume the powers and duties of his office within 15
5 days, unless the legislature determines otherwise by two-
6 thirds vote of its members. If the legislature so determines,
7 the lieutenant governor shall continue to discharge the
8 powers and duties of the office as acting governor.

9 (6) If the office of governor becomes vacant by
10 reason of death, resignation, or disqualification, the
11 lieutenant governor shall become governor for the remainder
12 of the term.

13 (7) Additional succession to such vacancies shall be
14 as provided by law.

15 (8) When there is a vacancy in the office of governor,
16 the successor shall have the title, powers, duties and emolu-
17 ments of that office and shall be the governor. When the
18 successor serves as acting governor for a temporary period,
19 he shall have only the powers and duties of the office for
20 the period during which he serves as such.

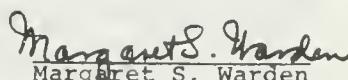
21 
22 Thomas F. Joyce, Chairman

23 
24 J. C. Garlington, Vice Chairman

25 
26 Harold Arbanas

27 
28 Fred W. Martin

29 
30 Richard B. Roeder

29 
30 Margaret S. Warden

COMMENTS ON MAJORITY PROPOSAL

Section 1. OFFICERS. (1) The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction.

(2) The superintendent of public instruction shall be the chief educational officer of the state, and shall have such qualifications, duties, salary, term of office and manner of election or selection as is provided by law.

(3) Except as herein provided for the superintendent of public instruction, each shall hold his office for a term of four years, commencing on the first Monday of January next succeeding his election and until a successor is elected and qualified.

(4) Each shall reside at the seat of government, where he shall keep the public records of his office.

(5) Each shall perform such duties as are prescribed in this constitution, and by law.

COMMENTS

The first sentence of section 1 reveals the decision of the majority of the executive committee as to the length of the ballot-- it is neither "short" nor "long". By a minority report, the "long" ballot is favored, and by an amendment to be presented on the floor the "short" ballot will be proposed. Thus, the convention will consider in all its aspects the structure of the state executive department.

The majority decision is to remove from the constitution the offices of state treasurer and state auditor, and to place in optional elective or appointive status the superintendent of public instruction. In addition, the committee is unanimous in removing from the constitution the office of state examiner

1 (section 8). In reaching this decision, the committee emphasizes
2 to the convention that removal from the constitution does not
3 automatically delete or terminate the offices affected. They
4 remain statutory offices until changed by the legislature, and
5 all the arguments advanced to this committee for retaining them
6 as elective offices are equally applicable to the legislature.

7 The principal reason for the committee decision is that
8 the functions of the state treasurer, state auditor and state
9 examiner are changing materially under the reorganization plan,
10 and we believe that their future position should therefore not
11 be "frozen" in their present form. Similar considerations
12 apply to the superintendent of public instruction, as will be
13 explained later.

14 Having stated the essence of our decision on these subjects,
15 we will describe briefly our procedures in making them. We
16 interviewed practically all of the principal officers of the
17 executive department so as to learn how their functions have
18 been affected by reorganization under the amendment approved
19 by the voters in 1970, and how their functions may serve as forms
20 of check and balance on other functions. From this information,
21 analyzed and compared with the modern trends in other states
22 where applicable to conditions in Montana, we concluded with
23 respect to the several offices:

24 Governor - the people having decisively voted to implement
25 a well-ordered executive department of government in place of
26 the 100 or more boards, bureaus, commissions, etc., it is clear
27 that a strong and responsive chief executive is desired. We
28 have clarified his powers and duties accordingly.

29 Lieutenant Governor - consistent with the above, we have
30 authorized an effective, full time lieutenant governor to assist

1 the governor, and to become a trained and responsible successor
2 to the governor should that become necessary. It is clear that
3 the governor's increasing duties and responsibilities require
4 more adequate staff support, and the lieutenant governor's
5 position is an appropriate part of it. To obtain the maxi-
6 mum of effective cooperation between these two officers, we
7 have provided that they shall be nominated and elected together.

8 Attorney General - he is the chief legal officer of the
9 state. He prosecutes or defends all litigation in which the
10 state is a party. He is legal counsel to all state officers
11 and agencies. He supervises many of the functions of county
12 attorneys, and through them the county officers and agencies.
13 In addition to this, he is legal adviser to the governor,
14 and here there arises divergence of opinion as to whether
15 he should be appointed by the governor (so as to be fully
16 compatible with his client, so to speak) or be elected by
17 the people (so as to be primarily responsible to them).

18 The majority of our committee believes he should be in
19 independent status as an elected officer, charged with en-
20 forcement of all the law for all the people. Since the
21 governor already has much authority, through the appointing
22 power particularly, we favor having an independent attorney
23 general free to inquire into the faithful performance of
24 duty by any state official or employee. We believe the
25 governor should have the right and opportunity to choose
26 his own legal counsel, but that such counsel should be a
27 part of his official staff rather than the attorney general.

28 Secretary of State - this office has a long historical
29 and traditional significance, and we think there is valid
30 reason to retain it for practical purposes as well as

1 tradition. As official custodian of the state's most im-
2 portant legislative and executive documents, we believe he
3 also should have the clear safeguard of independent election
4 with constitutional status. His principal functions are
5 ministerial, not policy forming, and by removing certain
6 constitutional boards on which he has served, there is
7 little basis for fear that his position might in the future
8 hamper the executive function of the governor

9 State Treasurer -

10 State Auditor - these offices are primarily charged
11 with duties in the financial area. With the advent of
12 reorganization, the entire accounting and bookkeeping pro-
13 cess of all state and local agencies is being converted
14 into a uniform pattern. Also, the legislature has developed
15 the process of legislative post-audit, and there is a grow-
16 ing pre-audit system. The committee believes it unwise to
17 retain in constitutional status two offices whose principal
18 service is in this very fluctuating field, and that efficient
19 auditing and record keeping should be allowed to develop
20 flexibly through legislation as technology and experience
21 permit.

22 Superintendent of Public Instruction - this office is
23 a part of the executive department, and yet it affects solely
24 the educational function, as established by Article XI. We
25 fully explored the duties of this office, and its relation
26 to the state board of education, in order to determine whether
27 it should be included, excluded or modified. It performs
28 practically no function exclusively referable to the
29 university system, and the board performs practically no
30 function referable to elementary and secondary education.

1 Thus, the board is, in net effect, a lay board charged
2 with complex responsibilities in a professional field,
3 and is without full-time professional counsel and
4 assistance. There is much public support for obtaining
5 by appointment instead of election a professional
6 educator to fill the gap which exists by virtue of
7 the present constitution. There is also support for
8 retaining the present status of the superintendent's
9 office. There is also clear need to resolve the
10 doubt and ambiguity which currently exist as to the
11 respective duties and authorities of the board and
12 the superintendent, now resolved simply by mutual
13 forbearance. There is clear prophecy of vast change
14 in the educational field, due to the constitutional
15 problems as to property tax equality now being
16 litigated in California, Texas and Minnesota.

17 Therefore, the committee believes the whole structure
18 of Montana's \$100,000,000 per year educational
19 system should not remain frozen in any form in the
20 constitution, and proposes to handle the superintendent's
21 office by an optional method which allows the legis-
22 lature to make the office elective or appointive
23 as in its current judgment it finds most advanta-
24 geous.

25 Board of Examiners - composed of the governor,
26 attorney general and secretary of state, this board
27 once was very powerful. It is no longer so, meeting
28 once a month for a few minutes to consider unliquidated
29 claims (if any) against the state. This change has
30 occurred through the reorganization. Being no

1 longer useful, the committee believes it should be
2 deleted from the constitution, to be revived by
3 legislation if necessity for it should again arise.

4 State Examiner - Most constitutions do not
5 create an office of state examiner, but Montana did
6 in 1889. While he once examined the accounts of some
7 state offices, he has become the examiner only of
8 county and local agencies now. The legislative
9 audit has greatly changed his function, and many
10 more changes are anticipated. It has not yet been
11 determined how Montana's ultimate modernized
12 accounting and record system, on a uniform basis,
13 will be audited, as this must await its completion.
14 In any event, this is a statutory matter which
15 should be free for adjustment by the legislature
16 as changing conditions may require. The state
17 examiner himself concurs in this view.

18 Section 2. ELECTION. (1) The governor,
19 lieutenant governor, secretary of state, attorney
20 general and the superintendent of public instruction,
21 if his election is provided by law, shall be elected
22 by the qualified electors of the state at a
23 general election held and finally determined
24 as provided by law.

25 (2) Each candidate for governor shall file
26 jointly with a candidate for lieutenant governor
27 in primary elections, or otherwise comply with
28 nomination procedures, so that the offices of
29 governor and lieutenant governor shall be voted
30 upon together in primary and general elections,

as provided by law.

COMMENTS

The major change in this section is the provision requiring the candidates for governor and lieutenant governor to run as a team at the time of filing. This is similar to the federal pattern.

The committee's intent was to make the lieutenant governor's duties full-time with the legislature providing adequate compensation commensurate with the responsibilities to be delegated by the governor and the legislature. These would provide the lieutenant governor with an insight to governmental responsibilities which would be of great value in the event he would have to assume the governorship. The committee was aware and is in agreement with the legislative department committee's decision eliminating the constitutional requirement that the lieutenant governor must preside over the senate. More meaningful duties thus can be assigned to this office.

Other Elective Officials

The article provides for the election of
the secretary of state and the attorney general,
but makes optional with the legislature the
election or selection of the state superintendent
of public instruction.

28 Section 3. QUALIFICATIONS. (1) Any person
29 shall be eligible to the office of governor,
30 lieutenant governor or secretary of state if

he or she is a citizen of the United States, a resident of Montana for two years next preceding the election, and is otherwise a qualified voter.

(2) In addition to the foregoing qualifications, any person to be eligible to the office of attorney general shall be an attorney in good standing admitted to practice law in the state of Montana, and have engaged in the active practice thereof for five years before election.

COMMENTS

The major deletion in article 3 was removal of the age requirement for all candidates except the attorney general. This age deletion was discussed in detail, but the majority of the committee concluded the people, the basic power source for effective government, could be relied upon to make the proper judgment as to candidates' qualifications and abilities to cope with the responsibilities elective officials acquire with election. The majority of the committee concluded the newly franchised young voters would vote just as wisely and cautiously as do their elders.

The exception for the attorney general was to conform with the proposed judicial article requiring five years of active practice before election, which would require a candidate to be at least 26 years of age.

Section 4. DUTIES. (1) The executive power of the state is vested in the governor, who shall see that the

1 laws are faithfully executed. He shall have such other
2 duties as are herein provided, and as provided by law.

3 (2) The lieutenant governor shall perform the duties
4 delegated to him by the governor, and those provided for
5 him by law, but no power specifically vested in the governor
6 by this constitution may be delegated to the lieutenant
7 governor in this manner.

8 (3) The secretary of state shall maintain the official
9 records of the acts of the legislative assembly, and of the
10 executive department, as provided by law. He shall keep
11 the great seal of the state of Montana, and perform any
12 other duties provided by law.

13 (4) The attorney general shall be the legal officer
14 of the state, with the duties and powers provided by law.

15 COMMENTS

16 This section retains Article VII, Section 5 of the
17 present constitution with the deletion of the word "supreme"
18 as superfluous. It acknowledges the governor is the chief
19 executive and is to be in control of the executive branch
20 of the government. Of course, he is limited in this
21 connection by laws passed by the legislature, and is further
22 limited by this section from direct responsibility of per-
23 forming the duties assigned the secretary of state and
24 attorney general. Yet he is charged with duty to see that
25 these officials perform the duties assigned to them by law.

26 In specifying dual duties for the lieutenant governor,
27 namely those delegated to him by the governor as well as
28 those that may be delegated to him by law, this section
29 makes it constitutionally permissible for the legislature
30 to make this a full time position. However, neither the

1 governor nor the legislature can delegate to him constitu-
2 tional duties assigned to the governor, such as, the veto
3 power, the appointive power, the budgetary power, the
4 pardoning power and others specifically set forth in the
5 executive article. To assume any of these powers the
6 lieutenant governor must become acting governor as herein-
7 after provided.

8 It is important to note that this section deletes the
9 present constitutional authority of the lieutenant governor
10 to assume the powers of the governor every time the governor
11 leaves the state.

12 The secretary of state is made the official keeper of
13 the great seal and the official records. He can also con-
14 tinue to be the supervisor of elections as he may perform
15 duties prescribed by law. By undertaking to set forth
16 specific duties it is hoped that future assignment of duties
17 by law to this office will be confined to the same general
18 area and that the secretary of state will not be made a
19 policy maker. However, we recognize the power of the
20 legislature is plenary.

21 Similarly, this section recognizes that the principal
22 duties of the attorney general will be to act as the legal
23 officer of the state. The committee considered, but re-
24 jected, including his recently acquired statutory duties
25 with respect to law enforcement and public safety. While
26 the committee believes it is proper he should have such
27 duties they should not be constitutionally required. Again
28 it is hoped this office will not be made a policy maker.

29 *Section 5. COMPENSATION. (1) Officers of the*
30 *executive department shall receive salaries provided by law,*

1 which may be increased but not decreased during the term of
2 office.

3 (2) No elected officer of the executive department may
4 during his term hold any other public office, or receive
5 compensation for his services from any governmental agency.
6 He may be a candidate for any public office during his term.

7 COMMENTS

8 This section changes the present constitutional pro-
9 vision that permits decreases but bars increases in salary
10 during the term. The reverse is now permitted. The present
11 constitutional prohibition regarding increases in salary
12 have made it impossible to realistically adjust for infla-
13 tionary pressures in the economy, and the risk that the
14 legislature will be over generous is not warranted by our
15 history.

16 The committee considered delegate proposal 39 creating
17 a wage board, but thought it to be a legislative matter.
18 The changes made in this section should give the legisla-
19 ture the courage to set just and fair salaries for elected
20 officials.

21 The second paragraph makes clear an elected official
22 cannot hold two public offices at the same time, nor can he
23 be on two government payrolls nor receive compensation from
24 the federal and state governments for performing govern-
25 mental duties. It also clears any ambiguity that arises
26 from the last sentence of the present Article VII, Section
27 4, and makes it clear the officers of the executive depart-
28 ment can seek another office without resigning. Upon
29 election, of course, he must resign or decline one or the
30 other.

Section 6. VACANCY IN OFFICE. (l) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office for the remainder of its term.

(2) If the office of secretary of state or attorney general becomes vacant by death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office until the next general election, and until his successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected.

(3) If the office of superintendent of public instruction becomes vacant, it shall be filled in the manner above provided if it is at that time an elective office; otherwise it shall be filled as provided by law.

COMMENTS

This section presupposes the governor and lieutenant governor will run as a team. It was therefore thought desirable to allow the governor to appoint his own teammate for the remainder of the term when a vacancy exists in the office of lieutenant governor. However, with the other officers we followed the established pattern of requiring election if the vacancy occurs in the first half of the term.

The appropriate exception is made if the superintendent of public instruction is made an appointive position by the legislature in the future.

1 Section 7. 20 DEPARTMENTS. All executive and admin-
2 istrative offices, boards, bureaus, commissions, agencies
3 and instrumentalities of the executive department of state
4 government and their respective functions, powers, and
5 duties, except for the office of governor, lieutenant
6 governor, secretary of state, attorney general and super-
7 intendent of public instruction shall be allocated by law among
8 and within not more than 20 departments. Subsequently, all
9 new powers or functions shall be assigned to departments,
10 divisions, sections, or units in such manner as will tend
11 to provide an orderly arrangement in the administrative
12 organization of state government. Temporary commissions
13 may be established by law and need not be allocated within
14 a principal department.

15 COMMENTS

16 The 1889 constitution's inherent contradiction -- the
17 delegation of executive power to the governor, yet restrict-
18 ing that power due to diffusion in constitutional boards --
19 has been clarified by the adoption of the executive reorgani-
20 zation amendment and the proposed corollary changes in this
21 executive article.

22 Previously, the divided powers of boards of elective
23 officers, such as the board of examiners, made a mockery
24 of section 5 of the present constitution: "The supreme
25 executive power of the state shall be vested in the governor,
26 who shall see that the laws are faithfully executed.". The governor, under reorganization and in this article,
27 has the responsibility and the accountability to the
28 electorate and the legislature. This fundamental prin-
29 ciple of delegation of power is an important breakthrough

1 in the continuing effort for effective, responsible, viable
2 and efficient government. The state's chief executive will
3 be chief in fact, not in rhetoric.

4 The majority of the committee deleted as constitutional
5 and elective officers the offices of state auditor and state
6 treasurer in accordance with the conviction that the respon-
7 sibilities and duties could be included under the 20 depart-
8 ment reorganization amendment and statutes.

9 Section 8. APPOINTING POWER. The principal depart-
10 ments provided for in section 7 shall be under the super-
11 vision of the governor, and, except as otherwise provided
12 herein or by law, shall be headed by a single executive
13 appointed by the governor and subject to confirmation by
14 the legislature. Such executives shall hold office until
15 the end of the term of the governor, unless sooner removed
16 by the governor.

17 (2) The governor shall appoint, subject to confirma-
18 tion by the legislature all officers provided for by this
19 constitution or by law and whose appointment or election
20 or term is not otherwise provided for. They shall hold
21 office until the end of the term of the governor unless
22 sooner removed by the governor.

23 (3) If a vacancy in any such office occurs during a
24 recess of the legislature, the governor shall appoint some
25 fit person to discharge the duties thereof until the next
26 meeting of the legislature, when the office shall be filled
27 by appointment and confirmation.

28 (4) No person not confirmed by the legislature for an
29 office shall, except at its request, be nominated again for
30 that office at the same session, or be appointed to that

1 office during a recess of the legislature.

2 COMMENTS

3 The fundamental concept of checks and balances by
4 separate branches of government is a key part of section
5 8. The governor has been delegated supervisory powers in
6 this article in accord to his constitutional designation
7 of executive power and the reorganization amendment and
8 statutes already approved.

9 This section is in keeping with the legislative imple-
10 mentation, dating back to the 1920's, of such a program.
11 However, the legislature had to reverse a trend whereby
12 executive power had been whittled to insignificance by
13 creation of more than 160 state agencies with little
14 executive or legislative supervision.

15 Now, this article, the governor has been delegated
16 that power, as well as the right to appoint and remove
17 heads of the principal departments. However, the legis-
18 lature has the power to confirm such appointments with
19 added safeguards to protect reappointment of rejected
20 nominees.

21 *Section 9. BUDGET AND MESSAGES.* The governor shall
22 at the beginning of each legislative session, and may at
23 other times, give the legislature information and recommend
24 measures he considers necessary. The governor shall sub-
25 mit to the legislature at a time fixed by law, a budget
26 for the ensuing fiscal period setting forth in detail, for
27 all operating funds, the proposed expenditures and estimated
28 revenue of the state.

29 COMMENTS

30 This section adopts the proposal of the constitution

1 revision sub-committees made in 1969, and is in accordance
2 with the prior recommendation of the legislative council.
3 The present statutory responsibility of the governor to
4 submit an executive budget to the legislature is made man-
5 datory by the constitution.

6 It revises section 10 of the present Article VII, and
7 eliminates the excess verbiage. The other requirements of
8 present section 10 are and should be governed by statute
9 and administrative procedures.

10 Section 10. VETO POWER. (1) All bills passed by the
11 legislature, except bills proposing amendments to the
12 Montana constitution, bills ratifying proposed amendments
13 to the United States constitution, resolutions, and
14 initiative and referendum measures, shall be submitted to
15 the governor who shall sign or veto every bill within five
16 days after its delivery to him if the legislature is in
17 session, or within 25 days if the legislature is adjourned.
18 The governor shall return vetoed bills to the legislature
19 with a statement of his objections.

20 (2) The governor may return any bill to the legis-
21 lature with his objections and with a recommendation for
22 an amendment or amendments to it. If the legislature
23 passes the bill in accordance with the governor's rec-
24 ommendation, it shall again return the bill to the Governor
25 for his reconsideration. The governor shall not return
26 a bill a second time, for amendment.

27 (3) Upon receipt of a veto message, the legislature
28 shall reconsider passage of the vetoed bill. A two-thirds
29 vote of the members present overrides the veto, and the
30 bill shall become law.

1 (4) If the legislature is not in session when the
2 governor vetoes a bill, he shall return the bill with his
3 objections to the legislature in a manner authorized by
4 law. The legislature, as provided in section 11, may re-
5 convene itself to reconsider any bills so vetoed by the
6 governor.

7 (5) The governor may veto items in appropriation
8 bills, and in such instances the procedure shall be the
9 same as upon veto of an entire bill.

10 COMMENTS

11 This section removes the governor from the process of
12 amending the state and federal constitutions. Constitu-
13 tional amendments initially must be approved by a two-
14 thirds vote in each house, which is the same majority re-
15 quired to override a gubernatorial veto. Therefore, there
16 is no reason to involve the governor in the process.
17 Similarly, the signature of the governor is not required
18 for resolutions because resolutions do not have the effect
19 of law. Consistent with section 1 of Article V of the pre-
20 sent constitution, the governor has no veto power over
21 initiative and referendum measures.

22 By the requirement in subsection 1 that the governor
23 sign or veto every bill presented to him, the "pocket veto"
24 is eliminated. Furthermore, subsection 4 authorizes the
25 legislature to reconvene to consider post-session vetoes.
26 The time period for gubernatorial consideration of bills
27 after adjournment of the legislature has been lengthened
28 from 15 to 25 days to give the governor sufficient time to
29 adequately study bills and in recognition of the "log-jam"
30 of legislation passed in the closing days of the legislature.

The committee considered and rejected the reduction veto, which is the power to reduce items in appropriation bills, because the members believe such a veto could result in irresponsibility. The reduction veto encourages the legislature to appropriate large sums of money to popular causes, shifting the onus of reducing the appropriations to the governor, while it also enables the governor to thwart an activity or program without the stigma of killing it.

The committee did, however, authorize the amendatory veto in subsection 2, which permits the governor to return a bill to the legislature with recommendations for changes that would make the bill acceptable to him. If the legislature by majority vote of the members present accepts the governor's recommendations, the bill is returned to the governor for reconsideration. The governor is prohibited from returning the bill a second time. The amendatory veto accommodates the situations when the governor objects to only parts of a bill and recognizes its general merit. In the states which authorize the amendatory veto, it is utilized more than the regular veto. The power of amendatory veto is intended to extend to appropriation bills.

In addition, the item veto is retained in subsection 5.

23 Section 11. SPECIAL SESSION. Whenever the governor
24 considers it in the public interest, he may convene the
25 legislature, either house, or the two houses in joint
26 session. At the written request of two-thirds of the
27 members of each house, the presiding officers of both
28 houses shall convene the legislature in special session.

COMMENTS

30 This section revises present section 11 of Article VII.

1 It continues the power of the governor to call special
2 sessions but removes his present authority to confine the
3 subjects to be considered. If the legislature is given
4 power to call itself into session the present limitation
5 would be ineffective in any case.

6 The section also permits the legislature to call itself
7 into session by a two-thirds vote of the full membership.
8 The decision on this question will be reached in the
9 legislative committee proposal.

10 *Section 12. PARDONS. The governor shall have the*
11 *power to grant reprieves, commutations and pardons after*
12 *conviction, reinstate citizenship and may suspend and remit*
13 *fines and forfeitures subject to procedures prescribed by*
14 *law.*

15 COMMENTS

16 This section revises the present section 9 of Article
17 VII. It deletes all the material after the proviso in the
18 present section. The power of the governor to grant
19 reprieves, commutations and pardons is still made subject
20 to procedures prescribed by law.

21 The legislature has now provided for an appointive lay
22 board of pardons and paroles. It no doubt will continue to
23 do so. Yet it seems to the majority of the committee
24 unnecessary to require it. The executive reorganization
25 director and the present chairman of the board of pardons
26 recommended the deletion.

27 The historical power of the chief executive to show
28 mercy should be retained, and the majority believe there
29 is no constitutional need for a buffer board appointed by
30 the governor.

1 By making no reference to the board of prison commis-
2 sioners in present section 20, the majority of the
3 committee suggests repeal. The control of the prison has
4 been assigned by law to the department of institutions and
5 the constitutional board consisting of the governor,
6 attorney general and secretary of state has not been per-
7 forming its constitutional duty in fact for many years.
8 The executive reorganization director recommends the repeal
9 to conform to the fact.

Section 13. MILITIA. The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

16 (2) The militia forces shall consist of all able-
17 bodied citizens of the state except such persons as are
18 exempted by law.

COMMENTS

The subject of military matters appears in Article II,
Article XIV, and the above section which gives the governor
command of the state militia. It no longer has the signif-
icance it did in frontier times, and has become largely
superseded or obsolete. The committee recommends simple
repeal of Article II and Article XIV, and inclusion of the
first paragraph of former Article XIV into section 13 above.

Article II - Research by the legislative council shows that none of the military reservations referred to in this article presently exist as such. No similar article exists in other constitutions. Its subject matter having passed

1 out of existence, so also should the article.

2 Article XIV - except for its section 1, which we have
3 included in our section 13, this article merely refers to
4 various matters on which the legislature was to pass
5 legislation. Since it could as well do so without such
6 provisions in the constitution, they serve no useful
7 purpose, and it is simply proper drafting to eliminate
8 them. This is also recommended by the legislative
9 council. Other constitutions do not contain similar
10 provisions.

11 The first paragraph of this section is former section
12 6 carried forward without change.

13 The second paragraph is taken from section 1, Article
14 XIV, without change except in one significant respect.
15 The committee includes two daring, forward-looking ladies
16 who foresee the time when their sex will be liberated to
17 equal responsibility for the safety of our state in time
18 of trouble. They have volunteered feminine membership in
19 the state militia, something which bodes well for the
20 future of its readiness for action. Therefore, the draft
21 as submitted omits the word "male" by necessity, and the age
22 limitations by courtesy.

23 Section 14. SUCCESSION. (1) If the governor elect is
24 disqualified, or dies, the lieutenant governor-elect upon
25 qualifying for the office shall become governor for the
26 full term. If the governor-elect fails to assume office for
27 any other reason, the lieutenant governor-elect upon
28 qualifying as such shall serve as acting governor until the
29 governor elect qualifies for office, or until the office be-
30 comes vacant.

1 (2) The lieutenant governor shall serve as acting
2 governor when requested in writing by the governor to do
3 so. He shall serve as acting governor during the absence
4 from the state of the governor for any period in excess
5 of 45 days.

6 (3) He shall also serve as acting governor when the
7 governor is disabled and by reason of that disability is
8 unable to communicate to the lieutenant governor the fact
9 of his inability to perform the duties of his office. The
10 lieutenant governor in such event shall continue to serve
11 as acting governor until the governor resumes the duties
12 of his office.

13 (4) Whenever the lieutenant governor and attorney
14 general transmit to the presiding officer of the legis-
15 lature their written declaration that the governor is un-
16 able to discharge the powers and duties of his office, the
17 legislature shall convene.

18 (5) If the legislature, within 21 days after convening,
19 determines by two-thirds vote of its members present that the
20 governor is unable to discharge the powers and duties of his
21 office, the lieutenant governor shall enter upon and dis-
22 charge the same as acting governor; thereafter, when the
23 governor transmits to the presiding officer of the legis-
24 lature his written declaration that no inability exists,
25 he shall resume the powers and duties of his office within
26 15 days, unless the legislature determine otherwise by two-
27 thirds vote of its members. If the legislature so deter-
28 mines, the lieutenant governor shall continue to dis-
29 charge the powers and duties of the office as acting
30 governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term.

(7) Additional succession to such vacancies shall be as provided by law.

7 (8) When there is a vacancy in the office of
8 governor, the successor shall have the title, powers,
9 duties and emoluments of that office and shall be the
10 governor. When the successor serves as acting governor
11 for a temporary period, he shall have only the powers and
12 duties of the office for the period during which he serves
13 as such.

COMMENTS

15 Subsection 1 authorizes the lieutenant governor-elect
16 to become governor in the event of the death or disquali-
17 fication of the governor-elect. The lieutenant governor
18 elect serves as acting governor if the governor-elect fails
19 to assume office for any other reason. Such a provision
20 is desirable because, in the absence of such a provision,
21 the courts of at least five states have determined that
22 the incumbent governor should continue in office when
23 the governor-elect was unable to qualify for inauguration.

24 By subsection 2, the governor is authorized to
25 request the lieutenant governor to serve as acting
26 governor, whether or not the governor is absent from the
27 state. Under this subsection, however, the lieutenant
28 governor no longer becomes acting governor the moment the
29 governor leaves the state. The committee believes that
30 by utilizing modern communications the governor can

1 effectively perform the duties of his office during a
2 short term absence from the state. Furthermore, the
3 governor is not prohibited from requesting the lieuten-
4 ant governor to act during a short-time absence. After
5 the governor has been absent from the state 45 days, how-
6 ever, the lieutenant governor does become acting governor.
7 Such a provision should tend to discourage the governor
8 from prolonged absences from the state.

9 Although Montana's constitution presently provides
10 for succession to the governorship in cases of "inability"
11 of the governor "to discharge the powers and duties of his
12 office", procedures for determining disability of the
13 governor are not provided. Unfortunate experiences in
14 several states with disabled governors and federal
15 experience with presidential disability illustrate that
16 procedures for determination of gubernatorial disability
17 are necessary. The committee therefore proposes a dis-
18 ability determination provision based upon the model
19 provided by the Twenty-fifth Amendment of the United
20 States Constitution. As noted above, under subsection 2
21 the governor may request the lieutenant governor to serve
22 as acting governor. This authority would extend to a
23 situation when, for example, the governor is scheduled
24 for surgery. Subsection 2 also authorizes the lieutenant
25 governor to become acting governor when the governor is
26 unable to communicate -- due, for example, to a stroke.
27 When the governor recovers, he may resume the duties of
28 his office.

29 Subsection 3 authorizes the lietenant governor and
30 attorney general to declare the governor's disability,

1 whereupon the legislature convenes to determine the
2 validity of the declaration. If two-thirds of the
3 legislature agree that the governor is disabled, the
4 lieutenant governor becomes acting governor. The
5 governor may resume his office by declaring that the
6 disability no longer exists unless the legislature
7 prevents his resumption of powers by a two-thirds vote.

8 When the governorship becomes vacant, the
9 lieutenant governor succeeds to the office of governor
10 for the remainder of the term. When the lieutenant
11 governor serves as acting governor, he exercises only
12 the powers and duties of the office of governor.

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MINORITY REPORT

1 BE IT PROPOSED BY THE MINORITY OF THE EXECUTIVE COMMITTEE:

2 That there be a new Article on the Executive to read
3 as follows:

4

5 ARTICLE _____

6

THE EXECUTIVE

7 Section 1. OFFICERS. (1) The executive department
8 shall consist of a governor, lieutenant governor, secretary
9 of state, attorney general, and superintendent of public
10 instruction and state auditor.

11 (2) Each shall hold his office for a term of four
12 years, commencing on the first Monday of January next
13 succeeding his election and until a successor is elected
14 and qualified.

15 (3) Each shall reside at the seat of government,
16 where he shall keep the public records of his office.

17 (4) Each shall perform such duties as are prescribed
18 in this constitution, and by law.

19 Section 2. ELECTION. (1) The governor, lieutenant
20 governor, secretary of state, attorney general, state
21 treasurer, the superintendent of public instruction and
22 state auditor shall be elected by the qualified electors
23 of the state at a general election held and finally
24 determined as provided by law.

25 (2) Each candidate for governor shall file jointly
26 with a candidate for lieutenant governor in primary
27 elections, or otherwise comply with nomination procedures,
28 so that the offices of governor and lieutenant governor
29 shall be voted upon together in primary and general elec-
30 tions, as provided by law.

1 Section 3. QUALIFICATIONS. (1) No person shall
2 be eligible to the office of governor, lieutenant governor,
3 attorney general or superintendent of public instruction
4 unless he has attained the age of 30 years at the time of
5 his election, nor to the office of secretary of state,
6 state auditor, or state treasurer, unless he has attained
7 the age of 25 years. In addition to the qualifications
8 above prescribed, each of the officers named shall be a
9 citizen of the United States, and have resided within the
10 state two years next preceding his election.

11 (2) In addition to the foregoing qualifications, any
12 person to be eligible to the office of attorney general
13 shall be an attorney in good standing admitted to practice
14 law in the state of Montana, and have engaged in the active
15 practice thereof for five years before election.

16 Section 4. The executive power of the state is vested
17 in the governor, who shall see that the laws are faithfully
18 executed. He shall have such other duties as are herein
19 provided, and as provided by law.

20 (2) The lieutenant governor shall perform the duties
21 delegated to him by the governor, and those provided for
22 him by law, but no power specifically vested in the governor
23 by this constitution may be delegated to the lieutenant
24 governor in this manner.

25 (3) The secretary of state shall maintain the offi-
26 cial records of the acts of the legislative assembly, and
27 of the executive department, as provided by law. He
28 shall keep the great seal of the state of Montana, and
29 perform any other duties provided by law.

30 (4) The attorney general shall be the legal officer

1 of the state, with the duties and powers provided by law.

2 The auditor shall be the custodian of all fiscal
3 records of the state. He shall be the issuing officer
4 for all state warrants, with other duties and powers
5 provided by law.

6 Section 5. COMPENSATION. (1) Officers of the
7 executive department shall receive salaries provided by
8 law, which may be increased but not decreased during the
9 term of office.

10 (2) No elected officer of the executive department
11 may during his term hold any other public office, or receive
12 compensation for his services from any governmental agency.
13 He may be a candidate for any public office during his term.

14 Section 6. VACANCY IN OFFICE. (1) If the office of
15 lieutenant governor becomes vacant by his succession to
16 the office of governor, or by his death, resignation or
17 disability as determined by law, the governor shall appoint
18 a qualified person to hold and serve in that office for the
19 remainder of its term.

20 (2) If the office of secretary of state, attorney
21 general, auditor, treasurer and superintendent of public
22 instruction becomes vacant by death, resignation or
23 disability as determined by law, the governor shall appoint
24 a qualified person to hold and serve in that office until
25 the next general election, and until his successor is
26 elected and qualified. The person elected to fill such
27 vacancy shall hold the office until the expiration of the
28 term for which the person he succeeds was elected.

29 Section 7. 20 DEPARTMENTS. All executive and adminis-
30 trative offices, boards, bureaus, commissions, agencies and

1 instrumentalities of the executive department of state govern-
2 ment and their respective functions, powers, and duties,
3 except for the office of governor, lieutenant governor,
4 secretary of state, attorney general and superintendent of
5 public instruction shall be allocated by law among and
6 within not more than 20 departments. Subsequently, all
7 new powers or functions shall be assigned to departments,
8 divisions, sections, or units in such manner as will tend
9 to provide an orderly arrangement in the administrative
10 organization of state government. Temporary commissions may
11 be established by law and need not be allocated within a
12 principal department.

13 Section 8. APPOINTING POWER. (1) The principal
14 departments provided for in section 7 shall be under the
15 supervision of the governor, and, except as otherwise
16 provided herein or by law, shall be headed by a single
17 executive appointed by the governor and subject to confir-
18 mation by the legislature. Such executives shall hold
19 office until the end of the term of the governor, unless
20 sooner removed by the governor.

21 (2) The governor shall appoint, subject to confirmation
22 by the legislature all officers provided for by this consti-
23 tution or by law and whose appointment or election or term
24 is not otherwise provided for. They shall hold office
25 until the end of the term of the governor unless sooner
26 removed by the governor.

27 (3) If a vacancy in any such office occurs during a
28 recess of the legislature, the governor shall appoint some
29 fit person to discharge the duties thereof until the next
30 meeting of the legislature, when the office shall be filled

1 by appointment and confirmation.

2 (4) No person not confirmed by the legislature for an
3 office shall, except at its request, be nominated again for
4 that office at the same session, or be appointed to that
5 office during a recess of the legislature.

6 Section 9. BUDGET AND MESSAGES. The governor shall
7 at the beginning of each legislative session, and may at
8 other times, give the legislature information and recommend
9 measures he considers necessary. The governor shall submit
10 to the legislature at a time fixed by law, a budget for
11 the ensuing fiscal period setting forth in detail, for all
12 operating funds, the proposed expenditures and estimated
13 revenue of the state.

14 Section 10. VETO POWER. (1) All bills passed by
15 the legislature, except bills proposing amendments to the
16 Montana constitution, bills ratifying proposed amendments
17 to the United States constitution, resolutions, and
18 initiative and referendum measures, shall be submitted to
19 the governor who shall sign or veto every bill within five
20 days after its delivery to him if the legislature is in
21 session, or within 25 days if the legislature is adjourned.
22 The governor shall return vetoed bills to the legislature
23 with a statement of his objections.

24 (2) The governor may return any bill to the legisla-
25 ture with his objections and with a recommendation for an
26 amendment or amendments to it. If the legislature passes
27 the bill in accordance with the governor's recommendation,
28 it shall again return the bill to the governor for his
29 reconsideration. The governor shall not return a bill a
30 second time, for amendment.

1 (3) Upon receipt of a veto message, the legislature
2 shall reconsider passage of the vetoed bill. A two-thirds
3 vote of the members present overrides the veto, and the
4 bill shall become law.

5 (4) If the legislature is not in session when the
6 governor vetoes a bill, he shall return the bill with his
7 objections to the legislature in a manner authorized by law.
8 The legislature, as provided in section 11, may reconvene
9 itself to reconsider any bills so vetoed by the governor.

10 (5) The governor may veto items in appropriation
11 bills, and in such instances the procedure shall be the
12 same as upon veto of an entire bill.

13 Section 11. SPECIAL SESSION. Whenever the governor
14 considers it in the public interest, he may convene the
15 legislature, either house, or the two houses in joint
16 session. At the written request of two-thirds of the
17 members of each house, the presiding officers of both
18 houses shall convene the legislature in special session.

19 Section 12. PARDONS. The governor shall have the
20 power to grant reprieves, commutations and pardons after
21 conviction, reinstate citizenship and may suspend and remit
22 fines and forfeitures subject to procedures prescribed by
23 law.

24 This action by the governor shall be upon the
25 recommendation of a board of pardons. The legislative
26 assembly shall by law prescribe for the appointment and
27 composition of said board of pardons, its powers and duties;
28 and regulate the proceedings thereof.

29 Section 13. MILITIA. (1) The governor shall be
30 commander-in-chief of the militia forces of the state,

1 except when these forces are in the actual service of the
2 United States, and shall have power to call out any part of
3 the whole of said forces to aid in the execution of the
4 laws, to suppress insurrection or to repel invasion.

5 (2) The militia forces shall consist of all able-bodied
6 citizens of the state except such persons as are exempted
7 by law.

8 Section 14. SUCCESSION. (1) If the governor elect
9 is disqualified, or dies, the lieutenant governor-elect
10 upon qualifying for the office shall become governor for
11 the full term. If the governor-elect fails to assume
12 office for any other reason, the lieutenant governor-elect
13 upon qualifying as such shall serve as acting governor until
14 the governor elect qualifies for office, or until the
15 office becomes vacant.

16 (2) The lieutenant governor shall serve as acting
17 governor when requested in writing by the governor to do so.
18 He shall serve as acting governor during the absence from the
19 state of the governor for any period in excess of 45 days.

20 (3) He shall also serve as acting governor when the
21 governor is disabled and by reason of that disability is
22 unable to communicate to the lieutenant governor the fact
23 of his inability to perform the duties of his office. The
24 lieutenant governor in such event shall continue to serve
25 as acting governor until the governor resumes the duties of
26 his office.

27 (4) Whenever the lieutenant governor and attorney
28 general transmit to the presiding officer of the legisla-
29 ture their written declaration that the governor is unable
30 to discharge the powers and duties of his office, the

1 legislature shall convene.

2 (5) If the legislature, within 21 days after convening,
3 determines by two-thirds vote of its members present that
4 the governor is unable to discharge the powers and duties of
5 his office, the lieutenant governor shall enter upon and
6 discharge the same as acting governor; thereafter, when the
7 governor transmits to the presiding officer of the legisla-
8 ture his written declaration that no inability exists, he
9 shall resume the powers and duties of his office within 15
10 days, unless the legislature determines otherwise by two-
11 thirds vote of its members. If the legislature so determines,
12 the lieutenant governor shall continue to discharge the
13 powers and duties of the office as acting governor.

14 (6) If the office of governor becomes vacant by
15 reason of death, resignation, or disqualification, the
16 lieutenant governor shall become governor for the remainder
17 of the term.

18 (7) Additional succession to such vacancies shall be
19 as provided by law.

20 (8) When there is a vacancy in the office of governor,
21 the successor shall have the title, powers, duties and emolu-
22 ments of that office and shall be the governor. When the
23 successor serves as acting governor for a temporary period,
24 he shall have only the powers and duties of the office for
25 the period during which he serves as such.

26 Betty F. Babcock
27 Betty L. Babcock
28

29 Archie O. Wilson
30 Archie O. Wilson

1 COMMENTS ON MINORITY PROPOSAL

2 The Minority Proposal is identical to the Majority
3 Proposal except for amendments in sections 1, 2, 3, 4, 6
4 and 12 designed to make the executive branch of govern-
5 ment more responsible to the citizens of the state by
6 providing for the election of the present elected
7 executive officers.

8 *Section 1. OFFICERS.* (1) *The executive department*
9 *shall consist of a governor, lieutenant governor, secretary*
10 *of state, attorney general, state treasurer, superintendent*
11 *of public instruction and state auditor.*

12 (2) *Each shall hold his office for a term of four*
13 *years, commencing on the first Monday of January next*
14 *succeeding his election and until a successor is elected*
15 *and qualified.*

16 (3) *Each shall reside at the seat of government,*
17 *where he shall keep the public records of his office.*

18 (4) *Each shall perform such duties as are prescribed*
19 *in this constitution, and by law.*

20 COMMENTS

21 The minority of the executive committee favor the
22 election of the major state executive offices because
23 government needs to be responsive and responsible to the
24 people it represents. The people must retain their right
25 to elect their officials. By elimination of their present
26 power to choose the major state offices we do not want to
27 defranchise the people of Montana of their sacred privi-
28 lege - their right to exercise the freedom of choice in the
29 elective process. The people deserve the right to choose
30 who shall represent them in government.

1 Montana by constitutional amendment and legislative
2 act is reorganizing its governmental processes under what
3 is known as executive reorganization. This is placing all
4 Montana's governmental administration and control directly
5 under the governor and appointed department heads. This
6 program is promoted in the name of efficiency and economy.

7 Government needs to be more to its constituents than
8 efficient and economical. It needs to be responsive and
9 responsible to the people it represents. Its responsi-
10 bilities includes not only the matter of protecting the
11 public trust, it includes having the trust of the public.

12 Public trust does not come from just a matter of
13 confidence in the integrity of public officers, but rather
14 it comes from knowing that public affairs are placed in
15 the public eye. This can only occur when the activities
16 of government are visible and when there are ways of
17 checking on what our public officials are doing.

18 The state treasurer and auditor are the major state
19 financial officers. One receives all state money, the
20 other disburses all state funds. One major concern relates
21 regarding reorganization to the financial affairs of the
22 state. This concern should be included in our proposed
23 constitution in such a way that we give the public the
24 best chance to view critically its public officers and
25 to avoid the open invitation to corruption. This should
26 include a public official, elected and responsible only
27 to the people and who is not subservient to the varying
28 political desires of some chief executive who perhaps
29 will be only concerned with an approving look from the
30 public at his administration.

1 We know that no governor will have continuous
2 opportunity to observe all the actions of his adminis-
3 trative officers. To place all fiscal affairs in one
4 administrative office, such as a controller's office,
5 not only jeopardizes the chief executive, it is one open
6 invitation to unviewed corruption.

7 We ask then this convention include separate fiscal
8 officers as elected officers in this proposed constitution
9 in the offices of state auditor and state treasurer.

10 The state superintendent of public instruction is
11 the major state educational officer and as such should
12 be elected by the people. The selection of the super-
13 intendent should be protected from undue political
14 influence by making her directly responsible to the
15 people.

16 We are with the majority committee proposal comments
17 on the election of the attorney general. We provide
18 further qualification in our section 3.

19 *Section 2. ELECTION.* (1) *The governor, lieutenant*
20 *governor, secretary of state, attorney general, state*
21 *treasurer, superintendent of public instruction and state*
22 *auditor shall be elected by the qualified electors of the*
23 *state at a general election held and finally determined as*
24 *provided by law.*

25 (2) *Each candidate for governor shall file jointly*
26 *with a candidate for lieutenant governor in primary elections,*
27 *or otherwise comply with nomination procedures, so that the*
28 *offices of governor and lieutenant governor shall be voted*
29 *upon together in primary and general elections, as pro-*
30 *vided by law.*

1 COMMENTS

2 This section adds the state treasurer, superintendent
3 of public instruction and state auditor to the elected
4 officers provided in the majority report. Our reasons
5 are explained in the comments to section 1.

6 *Section 3. QUALIFICATIONS.* (1) No person shall be
7 eligible to the office of governor, lieutenant governor,
8 attorney general or superintendent of public instruction
9 unless he has attained the age of 30 years at the time of
10 his election, nor to the office of secretary of state,
11 state auditor, or state treasurer, unless he has attained
12 the age of 25 years. In addition to the qualifications
13 above prescribed, each of the officers named shall be a
14 citizen of the United States, and have resided within the
15 state two years next preceding his election.

16 (2) In addition to the foregoing qualifications, any
17 person to be eligible to the office of attorney general
18 shall be an attorney in good standing admitted to practice
19 law in the state of Montana, and have engaged in the
20 active practice thereof for five years before election.

21 COMMENTS

22 This section retains the qualifications in section 3
23 of the present executive article. The major deletion in
24 section 3 recommended by the majority was removal of the
25 age requirements for all candidates except the attorney
26 general. The minority of the executive committee, believe
27 we would be derelict in our duty and inconsistent as well,
28 if we require specific qualifications for the attorney
29 general and remove all such qualifications for the rest
30 of the executive offices.

1 We realize it is unlikely that the electorate
2 would elect an eighteen year old to these offices, but
3 we feel strongly that the constitution must guarantee
4 a certain maturity as a qualification for office holders.

5 We are conscious of the increased intelligence and
6 ability of our young people, but feel confident that the
7 majority, those with mature attitudes, would want us to
8 require such qualifications for their own protection,
9 to insure the dignity of the office and to provide a
10 goal for them to strive for. In comparing Montana's
11 present constitution with six others we found the states
12 of Alaska, Michigan and New Jersey require a governor to
13 be at least 30 years of age and Hawaii and Puerto Rico
14 35 years. They also require longer residency requirements.
15 Virtually all state constitutions require higher age
16 qualifications for state officers than for the right to
17 vote.

18 Section 4. DUTIES. (1) *The executive power of the*
19 *state is vested in the governor, who shall see that the*
20 *laws are faithfully executed. He shall have such other*
21 *duties as are herein provided, and as provided by law.*

22 (2) *The lieutenant governor shall perform the duties*
23 *delegated to him by the governor, and those provided for*
24 *him by law, but no power specifically vested in the*
25 *governor by this constitution may be delegated to the*
26 *lieutenant governor in this manner.*

27 (3) *The secretary of state shall maintain the official*
28 *records of the acts of the legislative assembly, and of the*
29 *executive department, as provided by law. He shall keep*
10 *the great seal of the state of Montana, and perform any*

1 other duties provided by law.

2 (4) The attorney general shall be the legal officer
3 of the state, with the duties and powers provided by law.

4 (5) The auditor shall be the custodian of all
5 fiscal records of the state. He shall be the issuing
6 officer of all state warrants, with other duties and
7 powers provided by law.

8 COMMENTS

9 In addition to the language of section 4 proposed by
10 the majority in subsection (5) we have provided for the
11 duties of the auditor so this office may be strengthened
12 and our citizens may be assured there will always be a
13 completely independent elected auditor, free of political
14 pressure and responsible to the electorate to protect
15 their fiscal affairs.

16 The creation of a gubernatorially appointed depart-
17 ment head as the complete repository of all the state
18 fiscal and audit functions is an over centralization of
19 power and an open invitation to corruption. Montana, even
20 under its present system, has recently experienced two
21 separate embezzlement type situations. One was uncovered
22 by the bank examiner's office, the other by the state
23 auditor's office. Neither were in existence for a
24 particularly long time nor were the losses particularly
25 large, before their discovery. Due to the relatively
26 fast discovery of these transgressions, full restitution
27 was made possible. Therefore, it is very necessary to
28 retain internal control. Obviously any system of control,
29 which vests total control in one person or department, is
30 not a good system of control, in fact it would invite misuse.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office for the remainder of its term.

(2) If the office of secretary of state, attorney general, auditor, treasurer and superintendent of public instruction becomes vacant by death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office until the next general election, and until his successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected.

COMMENTS

Here we have inserted in subsection (2) the additional elected officers and deleted subsection (3) that appears in the majority report.

Section 12. *PARDONS.* The governor shall have the power to grant reprieves, commutations and pardons after conviction, reinstate citizenship and may suspend and remit fines and forfeitures subject to procedures prescribed by law. This action by the governor shall be upon the recommendation of a board of pardons. The legislative assembly shall be law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof.

1 COMMENTS

2 We agree with the majority of the executive
3 committee, except that we feel that it is appropriate
4 to establish constitutionally the board of pardons.
5 The pardon power of the governor is of such importance
6 that it should not be exercised without the prior
7 advice and consultation of a board of lay and pro-
8 fessional persons responsible for the state
9 correctional program.

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APPENDIX A

CROSS REFERENCES

Proposed Section	Present Article & Section
1	VII, 1
2	VII, 2
3	VII, 3
4	VII, 5, 15, 17
5	VII, 4
6	VII, 7, 15, 16
7	VII, 21
8	VII, 7
9	VII, 10
10	VII, 12, 13
11	VII, 11
12	VII, 9
13	VII, 6; XIV, 1
14	VII, 14, 15, 16
Not replaced	VII, 8, 18, 19, 20
Not replaced	XIV, 2, 3, 4, 5
Not replaced	II, 1

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the executive committee during its deliberations;

<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
1. 25	Chet Blaylock	Provides legislature with the opportunity to override post session gubernatorial vetoes by mail.	Rejected
2. 39	Jerome Cate	Provide for a wage commission	Rejected
3. 77	Richard Roeder	Executive Article providing for only the governor and lieutenant governor	Adopted in part
4. 107	Harold Arbanas	Executive Article providing for joint election of the governor, lieutenant governor and attorney general	Adopted in part
5. 110	Goeffrey Brazier	Eliminating number of times a person may succeed himself in office.	Rejected
6. 136	Robert Kelleher	Parliamentary form of government.	Rejected

<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
7. 152	Mike McKeon	Repeal Article XIV of the present constitution	Adopted in part
8. 170	Archie Wilson	Executive Article retaining constitutional officers and boards.	Adopted in part

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Forrest H. Anderson - Governor, State of Montana - Helena - Executive Article in general.
2. Richard B. Roeder - Delegate - Bozeman - Proposal 77.
3. William Crowley - Law Professor - Missoula - Reorganization.
4. George Bousliman - Deputy Director, Executive Reorganization - Helena - Reorganization.
5. Robert L. Woodahl - Attorney General, State of Montana - Helena - Office of Attorney General.
6. Frank Murray - Secretary of State - Helena - Office of Secretary of State.
7. Gail M. DeWalt - Deputy, Secretary of State - Helena - Office of Secretary of State.
8. Ernest Steel - Chairman, Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
9. William Johnson - Director, Public Utilities Department of the Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
10. Louis G. Boedecker - Commissioner, Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
11. Alfred Langley - Commissioner, Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.

Name - Affiliation - Residence - Subject

12. William O'Leary - Director, Legal Department, Railroad and Public Service Commission - Helena - Office of Railroad and Public Service Commission.
13. Ted Schwinden - Commissioner of Lands Department - Helena - Office of Lands Department
14. Maj. Gen. John Womack - Adjutant General, State of Montana - Helena - Military Articles in general.
15. Col. Harry Thode - Staff Administrative Assistant, Montana National Guard - Helena - Military Articles in general.
16. John Dowdall - State Examiner - Helena - Office of State Examiner.
17. Mrs. Diane Schladweiler - Montana League of Women Voters - Bozeman - League's position on the Executive Article.
18. E. V. "Sonny" Omholt - State Auditor - Helena - Office of State Auditor.
19. Alex Stephenson - State Treasurer - Helena - Office of State Treasurer.
20. Dean Reed - Deputy Legislative Auditor - Helena - Legislative Audits.
21. Morley Cooper - Chairman, State Board of Equalization - Helena - Functions and duties of State Board.
22. John Alley - Member, State Board of Equalization - Helena - Functions and duties of State Board.
23. Ray Wayrynen - Member, State Board of Equalization - Helena - Functions and duties of State Board.
24. Keith Colbo - Director, Department of Revenue - Helena - Functions and duties of his office.
25. Ed Nelson - Executive Secretary, University System - Helena - Views on Board of Education.
26. Harriet Meloy - Member, Board of Education - Helena - Views on Board of Education.

Name - Affiliation - Residence - Subject

27. Tim Babcock - Former Governor, State of Montana - Helena - Executive Article in general.
28. Tom Judge - Lieutenant Governor, State of Montana - Helena - Duties and recommendations pertaining to the office of Lieutenant Governor.
29. Doyle Saxby - Director, Department of Administration - Helena - Functions and duties relating to department of administration.
30. Don Dooley - Legislative Council office - Helena - Duties pertaining to legislative council.
31. John Peterson - Chairman, Board of Pardons - Butte - Recommendations concerning Board of Pardons.
32. Dolores Colburg - Superintendent of Public Instruction - Helena - Recommendations pertaining to her office.
33. Jack Gunderson - Education Committee, House of Representatives - Power, Montana - His views and recommendation concerning education.
34. Mrs. Rosemary Boschert - Housewife - Eastern Montana - Her views on education.
35. LeRoy Corbin - Montana Federation of Teachers - Butte - Federation of Teachers' stand on education.
36. Chad Smith - Montana School Boards Association - Helena - Association's position regarding education.
37. Geoffrey L. Brazier - Delegate - Helena - Proposal 110.
38. Roy G. Crosby, Jr. - Citizens for Constitutional Government - Missoula - Citizens position on the executive article.
39. Donald A. Garrity - Lawyer - Helena - Testifying on parliamentary form of government.
40. Robert L. Kelleher - Delegate - Billings - Proposal 136.

Name - Affiliation - Residence - Subject

41. Robert Watt - Montana Student Presidents Association - Missoula - Position taken by Association.
42. Miles Romney - Delegate - Hamilton - Proposal 19.
43. Members of the Board of Regents - Their views concerning education.
44. D. D. Cooper - Montana Education Association - Helena - Position taken by MEA concerning education.
45. Sidney T. Smith - Commissioner of the Department of Labor and Industry - Helena - Duties and recommendations concerning department of labor and industry.
46. Harold Arbanas - Delegate - Great Falls - Proposal 107.
47. Betty Babcock - Delegate - Helena - Proposal 170.
48. Archie O. Wilson - Delegate - Hysham - Proposal 170.
49. Jean Anderson - President, Montana League of Women Voters - Billings - League's position on the executive article.
50. Carol Mitchell - Montana Common Cause - Helena - Position taken by Montana Common Cause on executive article.
51. Chet Blaylock - Delegate - Laurel - Proposal 25.
52. Ted James - Former Lieutenant Governor - Great Falls - Recommendations pertaining to office of lieutenant governor.
53. Lee N. Von Kuster - Professor, University of Montana - Missoula - Reasons for appointed state superintendent of public instruction.

MAJORITY

	ROLL CALL VOTE	EXECUTIVE	COMMITTEE - 4 th LEGISLATIVE SESSION - 1969
	Date: 2/12 No: Sec. 1	Date: 2/12 No: Sec. 2	Date: 2/12 No: Sec. 3
	Date: 2/12 No: Sec. 4	Date: 2/12 No: Sec. 5	Date: 2/12 No: Sec. 6
<u>Thomas F. Joyce, Chr.</u>	Y	N	Y
<u>J.C. Garlington, V.C.</u>	Y	Y	Y
<u>Harold Arbanas</u>	Y	Y	Y
<u>Betty Babcock</u>	N	N	Y
<u>James R. Felt</u>	A	A	A
<u>Fred J. Martin</u>	Y	Y	Y
<u>Richard B. Roeder</u>	Y	Y	Y
<u>Margaret S. Warden</u>	Y	Y	Y
<u>Archie O. Wilson</u>	N	N	Y
Total	Yea 6	5	6 8
	Nay 2	3	2 0
	Absent 1	1	1 1

MAJORITY

	ROLL CALL VOTE	EXECUTIVE	COMMITTEE	
	Date: 2/12 No: Sec. 9	Date: 2/12 No: Sec. 10	Date: 2/12 No: Sec. 11	Date: 2/12 No: Sec. 12
	Date: 2/12 No: Sec. 13	Date: 2/12 No: Sec. 14		
Thomas F. Joyce ,Chr.	Y	Y	Y	Y
J.C.Garlington, V.C.	Y	Y	Y	Y
Harold Arbanas	Y	Y	Y	Y
Betty Babcock	Y	Y	Y	Y
James R. Felt	A	A	A	A
Fred J. Martin	Y	Y	Y	Y
Richard B. Roeder	Y	Y	Y	Y
Margaret S. Warden	Y	Y	Y	Y
Archie O. Wilson	Y	Y	N	Y
Total	Yea 8	8	6	8
	Nay 0	0	2	0
	Absent 1	1	1	1

MINORITY

	ROLL CALL VOTE	EXECUTIVE	COMMITTEE							
	Date: 2/12 No: Sec. 1	Date: 2/12 No: Sec. 2	Date: 2/12 No: Sec. 3	Date: 2/12 No: Sec. 4	Date: 2/12 No: Sec. 5	Date: 2/12 No: Sec. 6	Date: 2/12 No: Sec. 7	Date: 2/12 No: Sec. 8	Date: 2/12 No: Sec. 9	Date: 2/12 No: Sec. 10
Thomas F. Joyce, Chr.	N	Y	Y	N	N	N	N	N	N	N
J.C. Garlington, V.C.	N	N	N	N	N	N	N	N	N	N
Harold Arbanas	N	N	N	N	N	N	N	N	N	N
Betty Babcock	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
James R. Felt	A	A	A	A	A	A	A	A	A	A
Fred J. Martin	N	N	N	N	N	N	N	N	N	N
Richard B. Roeder	N	N	N	N	N	N	N	N	N	N
Margaret S. Warden	N	N	N	N	N	N	N	N	N	N
Archie O. Wilson	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Total	2	3	3	2	0	2	1	0	0	0
Nay	6	5	5	6	8	6	7	8	8	8
Absent	1	1	1	1	1	1	1	1	1	1

MINORITY

ROLL CALL VOTE --- EXECUTIVE COMMITTEE

	Date: 2/12 No: Sec. 9	Date: 2/12 No: Sec. 10	Date: 2/12 No: Sec. 11	Date: 2/12 No: Sec. 12	Date: 2/12 No: Sec. 13	Date: 2/12 No: Sec. 14	Date: No: Sec. 14
Thomas F. Joyce, Chr.	N	N	N	N	N	N	N
J.C. Garlington, V.C.	N	N	N	N	N	N	N
Harold Arbanas	N	N	N	N	N	N	N
Betty Babcock	N	N	N	Y	N	N	N
James R. Felt	A	A	A	A	A	A	A
Fred J. Martin	N	N	N	N	N	N	N
Richard B. Roeder	N	N	N	N	N	N	N
Margaret S. Warden	N	N	N	N	N	N	N
Archie O. Wilson	N	N	N	Y	N	N	N
Total	Yea	0	0	2	0	0	0
	Nay	8	8	6	8	8	8
	Absent	1	1	1	1	1	1

